

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REX – REAL ESTATE EXCHANGE,  
INC.,

Plaintiff,

v.

ZILLOW, INC., et al.,

Defendants.

C21-0312 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff’s motion, docket no. 146, to compel compliance with the Court’s Electronically Stored Information (“ESI”) Order is GRANTED in part and DENIED in part, as follows. The motion is GRANTED as to Bob Goldberg, Katherine Johnson, Kevin Milligan, and Clifford Niersbach, and defendant National Association of REALTORS (“NAR”) shall add these individuals to its custodian designations. All other requested relief is DENIED. Plaintiff delayed in bringing this motion for approximately six months. The Court, however, concludes that the designation of these additional custodians will not impose a significant burden on NAR and is proportional to the needs of the case. Plaintiff has demonstrated that Bob Goldberg, Katherine Johnson, Kevin Milligan, and Clifford Niersbach are likely to have ESI relevant to the central issues implicated in this action. *See* Ex. A to Ungaro Decl. (docket no. 147-1). Further, NAR’s argument regarding the increased burden of designating its legal counsel as ESI custodians is unavailing because NAR previously designated Katherine Johnson and Clifford Niersbach as ESI custodians in a separate action. *See* Ex. F to Ungaro Decl. (docket no. 147-6).

1 (2) Plaintiff's motion to compel, docket no. 148, is DENIED. Plaintiff's  
Request for Production ("RFP") No. 31 seeks "all Documents relating to or produced by  
2 NAR in the *Moehrl* Antitrust Litigation or the *Sitzer* Antitrust Litigation." Ex. C to  
Goldfarb Decl. (docket no. 149-3). *Moehrl* and *Sitzer* are pending antitrust actions that  
3 challenge NAR's Buyer-Broker Commission Rule as being anticompetitive. *See Sitzer*  
Compl. at ¶¶ 1–29, Ex. A to Goldfarb Decl. (docket no. 149-1); *Moehrl* Compl. at ¶¶ 1–  
4 18, Ex. B. to Goldfarb Decl. (docket no. 149-2). Plaintiff alleges, in a conclusory  
fashion, that there is substantial factual and legal overlap between those actions and the  
5 present matter. But RFP No. 31 is overly broad, and the Court is not persuaded that all  
documents produced by NAR in those actions are relevant to this case. *See King County*  
6 *v. Merrill Lynch & Co.*, No. C10-1156, 2011 WL 3438491, at \*3 (W.D. Wash. Aug. 5,  
2011) ("Plaintiff must make proper discovery requests, identifying the specific categories  
7 of documents sought, in order to obtain them—and each category must be relevant to its  
claims and defenses.").

8 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
9 record.

10 Dated this 29th day of September 2022.

11 Ravi Subramanian

12 Clerk

13 s/Gail Glass

14 Deputy Clerk  
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